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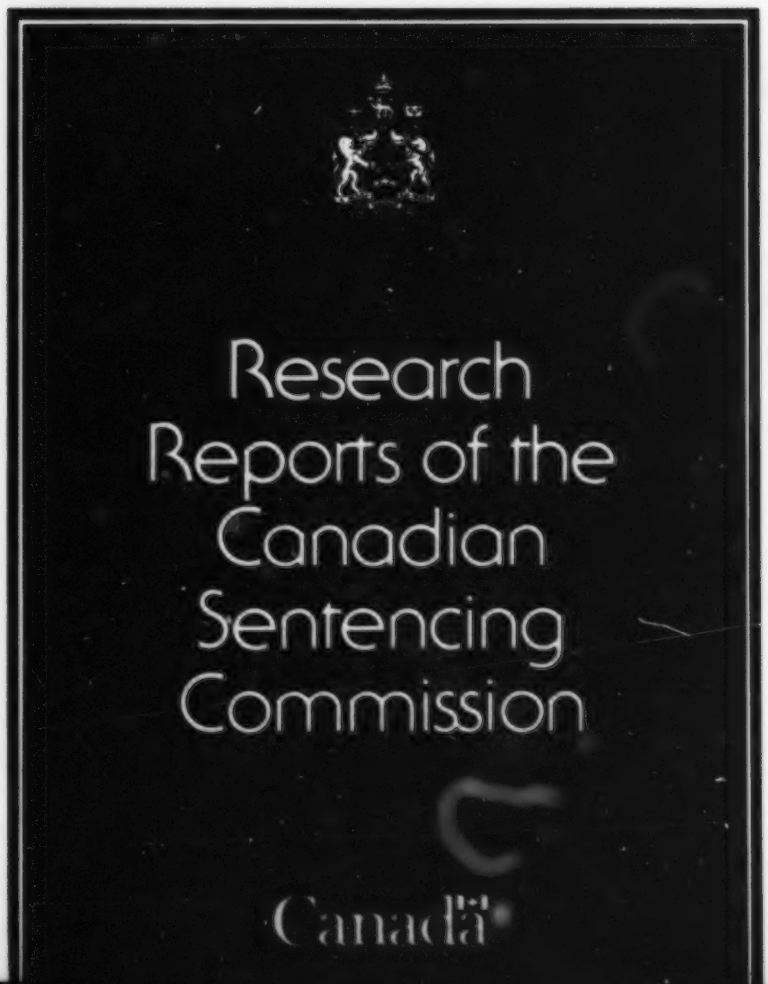
VIEWS OF SENTENCING: A SURVEY OF JUDGES IN CANADA



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VIEWS OF SENTENCING:
A SURVEY OF JUDGES IN CANADA

Research Staff* of the
Canadian Sentencing Commission
1988

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PREFACE

One of the earliest priorities of the research team of the Canadian Sentencing Commission was to survey the opinions of sentencing judges in Canada. Accordingly a questionnaire was devised, in the fall of 1984, to address all the issues related to sentencing which were directly or indirectly raised by the Commission's mandate. This questionnaire was revised and sent out to respondents in the spring of 1985. Judges were encouraged to write comments, but the confidentiality of these comments was made clear. The present document contains a description of the survey. an item-by-item breakdown of responses, and some subsidiary analyses.

This poll represents the first, systematic attempt to canvass the views of judges in this country. As will be seen, over 400 judges sent back completed questionnaires. This is a high return rate for professional groups of this nature. The results of this survey should prove of great interest to the criminal justice community.

HIGHLIGHTS OF THE JUDGES' QUESTIONNAIRE

Questionnaires were received from 414 respondents, almost 1/3 of the total number of sentencing judges in Canada. Most (65%) were anonymous. Most (57%) were provincial court judges. This summary covers some, but not all of the items in the questionnaire.

Purpose of Sentencing:

* 88% endorsed protection of the public as the overall purpose.

* 85% stated that the goals set out in Bill C-19 were suitable goals for sentencing.

* 86% endorsed proportionality as the main principle in sentencing.

Unwarranted Variation:

* 12% said there was too much variation from judge to judge; 62% said there was a fair amount of variation; 26% said that the variation that does exist is not significant.

* Of those respondents who thought there was a problem with unwarranted variation, the most popular explanation (69%) was 'different personal attitudes and/or approaches of judges to sentencing'. Only 5% of this group attributed unwarranted sentencing variation to a lack of legislative guidance.

* 50% thought there was some unwarranted variation from province to province in sentences handed down.

Ways of Dealing With Unwarranted Variation:

* The most popular way of dealing with sentencing variation was through the existing provincial Courts of Appeal: this view was endorsed by 73% of judges.

* 61% were opposed to some kind of grid system to determine sentences

* 81% were opposed to the use of a mathematical equation to arrive at a sentence.

* 67% were opposed to a ranking of all Criminal Code offences to make their sentences reflect their degree of seriousness.

* 73% thought that if there were to be sentencing guidelines, some offences should be excluded from them.

National Sentencing Court:

* 80% thought it was not a good idea to have a national sentencing court.

Plea Bargaining:

* 79% stated that they were never or rarely involved in plea and sentence negotiations.

* 86% were opposed to a legislative prohibition of plea and sentence negotiations.

Real Sentencing:

* Over 2/3 of the sample thought that the conflict between sentencing an offender for the real offence as opposed to what he was convicted of, was not an issue worth probing.

Information Systems:

* 79% favoured having a better information system about current sentencing practice.

* The most popular option (78%) said more complete reporting of trial judgments would be useful.

Computer Systems:

* 70% favoured having a computer system to provide basic sentencing information about individual cases.

* 65% favoured a computer system to provide statistical summary information about current sentencing trends.

Current Maxima as a Guide:

* 22% said current maxima served as a guide "most or all of the time"
  50% said "sometimes"
  28% said "seldom or never"

* The sample was evenly divided on whether more realistic maxima (closer to actual practice) would be more useful: 49% said yes, 51% said no.

* 2/3 thought that the current maxima convey a false impression to the public.

Suspended Sentences:

* 68% supported revised suspended sentences to allow the judge to impose the sentence and then suspend the serving of that time. If the offender were to breach a condition of the suspension, he would then be sent to prison (without a resentencing hearing).

Re-ordering Offences by Seriousness Ranking:

* Most respondents (62%) opposed this proposal.

Effect on Sentencing of the Availability of Prison Space:

* 65% expressed the view that consideration of prison space did not affect judges in their determination of sentences.

Effect on Sentencing of Changes to Release Procedures:

* 64% believed that sentencing would change if early release procedures were altered.

Mandatory Supervision:

* Slightly more (57%) were opposed to retaining mandatory supervision than were in favour.

* 93% expressed support of some form of earned remission.

* Most respondents chose 1/3 as the maximum portion of sentence that should be remitted.

Parole:

* 86% thought that the decision to release an offender on parole should be based on behaviour in prison and predictions of how he would behave outside.

* The sample split 50-50 on whether there should be some form of judicial control over parole and/or other early release provisions.

Finally, the court level of the respondent, and his or her province of residence had little systematic influence over responses to the questions.

Introduction

In order to gauge opinion of sentencing judges in this country, a questionnaire was mailed in March, 1985 to all chief judges in Canada with a request that it be distributed to every active sentencing judge. Three months later a reminder with additional forms was sent. By September 1, 1985, 414 completed questionnaires had been received for an overall response rate of 31%.

The return rate was quite variable across the country as Table 1 shows:

TABLE 1

Response Rates of Survey

Provinces	Number of Sentencing Judges	Number of Completed Questionnaires	Percentage
British Columbia	194	99	51%
Alberta	169	46	27%
Saskatchewan	77	16	21%
Manitoba	97	22	23%
Ontario	394	101	26%
Quebec	250	55	22%
New Brunswick	38	23	61%
Nova Scotia	48	20	42%
Prince Edward Island	10	5	50%
Newfoundland	46	12	26%
Yukon	3	1	33%
Northwest Territories	6	0	0%
TOTALS:	1,332	414	31%

Court Level

The majority of respondents (57%) came from Provincial Courts. A further (18%) came from County Districts, (19%) from Superior and (6%) from Court of Appeal.

This report contains a question-by-question breakdown of responses to the multiple-choice items The report is divided into sections according to topic. For a copy of the questionnaire, see "Appendix A".

Purposes and Principles

1 (a) Do you think that there should be a legislated statement of purposes and principles of sentencing?

42 Yes
22 Possibly
34 No
2 Missing

1 (b) Do you think that such a statement would enhance public understanding of sentencing?

28 Yes
29 Possibly
33 No

1 (c) Do you think that the overall purpose of sentencing is the protection of the public?

78 Yes
22 No

1 (d) Are the goals that were set out in Bill C-19 in sub-section 645(1)(a-e), taken as a whole, a suitable set of goals for sentencing?

14 Definitely yes
71 Generally speaking, yes
13 No, there are some problems with these goals
2 Definitely not

If you feel that specific goals should be added, deleted, or amended, it would be helpful for us if you could indicate this to us.

1 (e) Part I Do you think that the goals (as listed above, taken from s.645, for example) should be given the same weight for every offence?

9 Definitely yes
42 Yes, except for rare exceptions
49 No

1 (e) Part II If your answer to this question was "No", do you think that this Commission should specify which goals are suited for specific offences?

16 Yes
84 No

1 (f) The first principle listed (from the former Bill C-19) is that the sentence should be proportionate to the gravity of the offence. Do you think that this should be the main principle in assigning the sentence?

9 Yes
23 Yes in almost all cases
54 Yes in most cases
14 No

Sentencing Disparity

2 Many commentators have suggested that there is a certain amount of unwarranted variation in sentences and that this violates accepted principles of sentencing.

(a) Do you think that there is unwarranted variation in sentences being handed down in Canada? In other words, do you think that a given person being sentenced in a specific case would get different sentences depending on the judge who was doing the sentencing?

12 Yes, there is too much variation from judge to judge
62 Yes, there is a fair amount of variation from judge to judge
26 The variation that does exist is not significant

2 (b) If you think that there is a problem of unwarranted variation in sentencing, which of the following do you think are reasons for this problem: (Check all that apply)

16 Lack of consensus on the specific purposes of sentencing
18 Lack of consensus on the important factors to be considered in sentencing
69 Different personal attitudes and/or approaches of judges to sentencing
34 Lack of consensus on how severe sentences generally should be
21 Lack of guidance from the Court of Appeal
5 Lack of legislative guidance
18 Lack of information about sentencing practice
11 Other (please specify)

Community Standards

2 (c) Part I Do you think that the community in which a person lives (or in which the offence took place) is, in current practice, an important factor in the determination of the sentence?

25 Yes, it is very important
55 It is important in some cases
16 It is important in only a few cases
4 It is an unimportant factor in current sentencing practice

2 (c) Part II Do you think that the community should be an important factor?

23 Yes, it should be very important
54 It should be important in some cases
18 It should be important in only a few cases
5 It should be irrelevant to sentencing

2 (d) Do you think that there is unwarranted variation from province to province in the sentences that are handed down?

8 There is a large amount of unwarranted variation
50 There is some unwarranted variation
27 There is a small amount of unwarranted variation
9 There is only a trivial amount of unwarranted variation
7 There is no unwarranted variation

2 (e) Do you think that it would be helpful to have a national sentencing court which could hear appeals from all provincial courts of appeal?

8 Definitely yes
12 Yes, under certain conditions
40 Probably not
40 Definitely not

Sentencing Guidelines/Aids

3 The Canadian Sentencing Commission is required to consider and develop guidelines for sentencing within the Canadian context. The term "guideline" usually refers to some method for structuring the sentencing decision to make sentences more predictable, understandable, and to reduce unwarranted variation. The work itself has not been operationally defined and could mean a large number of different things. We would like you to give your views on each of the following ways in which the sentencing decision might be "guided". Noted that they are not mutually exclusive. Indeed some might feel that all would aid the sentencing process whereas others might feel that all would hinder it.

3 (a) The present system of guidance from the C.A. in your province.

27 This is the best or one of the best ways of dealing with unwarranted variation in sentences
46 This is a useful way of dealing with unwarranted variation in sentences
8 Under special circumstances it might be a good way of dealing with unwarranted variation in sentences
8 It is not a useful way of dealing with unwarranted variation in sentences
10 It causes more problems than it solves

3 (b) A more explicit list of factors, purposes, or principles that should be considered in determining the sentence.

5 This would be the best or one of the best ways of dealing with unwarranted variation in sentences
37 This would be a useful way of dealing with unwarranted variation in sentences
17 Under special circumstances it might be a good way of dealing with unwarranted variation in sentences.
15 It would not be a useful way of dealing with unwarranted variation in sentences
25 It would cause more problems than it would solve

3 (c) An explicit statement or system of weighing of the factors to be considered in determining the sentence.

4 This would be the best or one of the best ways of dealing with unwarranted variation in sentences.
28 This would be a useful way of dealing with unwarranted variation in sentences
19 Under special circumstances it might be a good way of dealing with unwarranted variation in sentences
15 It would not be a useful way of dealing with unwarranted variation in sentences
34 It would cause more problems than it would solve

3 (d) "Guideline" decisions which might come from the C.A. of your province which might state, for example, the appropriate sentence for certain specific types of offences or which might state the minimum "starting point" for particular kinds of cases.

17 This would be the best or one of the best ways of dealing with unwarranted variation in sentences.
42 This would be a useful way of dealing with unwarranted variation in sentences
19 Under special circumstances it might be a good way of dealing with unwarranted variation in sentences
8 It would not be a useful way of dealing with unwarranted variation in sentences
14 It would cause more problems than it would solve

3 (e) A legislated "presumptive sentence" or range of sentences for the "normal" or "average" instance of a particular offence. (Offences in such a system might be broken down into "finer" categories than they are in the Criminal Code. There could be, then, a number of different categories of offences, such as robbery, which would differ in seriousness).

4 This would be the best or one of the best ways of dealing with unwarranted variation in sentences.
20 This would be a useful way of dealing with unwarranted variation in sentences
19 Under special circumstances it might be a good way of dealing with unwarranted variation in sentences
15 It would not be a useful way of dealing with unwarranted variation in sentences
42 It would cause more problems than it would solve

3 (f) Some kind of "grid" whereby offences might be broken down into a dozen or so different categories (according to the seriousness of the offence) and the offender's criminal record would similarly be categorized numerically into one of a dozen or so categories. In some states in the United States, these two scores (the "offence" and the "offender" score) taken together determine the appropriate narrowly defined range for the sentence. Judges are expected normally to sentence within that range, although provision is made to modify the sentence because of certain aggravating or mitigating circumstances. In addition, judges can go outside the range (often with certain consequences relating to the ability of the accused or the prosecutor to appeal the sentence) if they believe it is just to do so.

8 This would be the best or one of the best ways of dealing with unwarranted variation in sentences.
18 This would be a useful way of dealing with unwarranted variation in sentences
18 Under special circumstances it might be a good way of dealing with unwarranted variation in sentences
17 It would not be a useful way of dealing with unwarranted variation in sentences
44 It would cause more problems than it would solve

3 (g) Some form of mathematical equation combining a number of different aspects of the case in such a way that each factor is given a specific weight in arriving at a presumptive sentence?

1 This would be the best or one of the best ways of dealing with unwarranted variation in sentences.
5 This would be a useful way of dealing with unwarranted variation in sentences
13 Under special circumstances it might be a good way of dealing with unwarranted variation in sentences
22 It would not be a useful way of dealing with unwarranted variation in sentences
59 It would cause more problems than it would solve

3 (h) Part I A system of ranking of all Criminal Code offences (thus removing them from their present categories of offences). This would mean that the relative seriousness of all offences would be explicit and sentences would, presumably, generally speaking, follow that legislated ranking.

2 This would be the best or one of the best ways of dealing with unwarranted variation in sentences.
23 This would be a useful way of dealing with unwarranted variation in sentences
18 Under special circumstances it might be a good way of dealing with unwarranted variation in sentences
25 It would not be a useful way of dealing with unwarranted variation in sentences
32 It would cause more problems than it would solve

3 (h) Part II Are there any other forms of "guidelines" or systems (of any sort) that might assist judges in sentencing that you think should be considered by the Commission?

Sentencing Guidelines

4 (a) Should there be any particular offences which should not be incorporated into a guidelines system?

27 No
73 Yes (If yes, it would be helpful if you could specify which ones.)

4 (b) If a person is to be given a sentence not involving incarceration, should there be some form of guidelines concerning what type and severity of non-carceral sentence should be imposed?

44 No
56 Yes

4 (c) Do you think that the same guidelines should be used for all provinces?

31 Definitely yes
53 Generally yes, but there might be some opportunity for variation
16 No

4 (d) Do you think that it is possible to draw up a reasonably complete set of relevant offence/offender characteristics that should or do affect sentences?

19 Yes
43 Possibly
38 No

4 (e) If such a list were to be created, do you think it would be useful in helping to guide the sentencing process?

25 Yes
45 Possibly
30 No

Plea and Sentence Bargaining

5 It has been suggested that one possible consequence of attempts to structure further the sentencing process might be that an increased number of important decisions that affect the sentencing process would be made in plea and sentence negotiations between the Crown and defence. As a result, the Commission has been asked to concern itself with the relationship of plea negotiations and sentencing.

(a) Do you think that at present plea and sentence negotiations have much of an impact on the sentencing process or on the sentences that are imposed?

41 Definitely yes
35 In some circumstances
16 Occasionally
6 Almost never
2 Never

5 (b) Do you think that there should be legislative recognition and control of plea and sentence negotiations?

21 Yes
27 Possibly
52 No

5 (c) Do you favour a legislative prohibition of plea and sentence negotiations?

5	Definitely yes
6	Yes, if it could be enforced
3	Possibly
23	Probably not
63	Definitely not

5 (d) Are there changes that you feel should be made in the way in which prosecutorial discretion is exercised and/or controlled?

23	Yes
32	Possibly
44	No

5 (e) How active a role do you presently play in plea and sentence negotiations?

58	I am never directly involved
21	I am only rarely involved
12	I am occasionally involved either in chambers or in court
6	I am frequently involved in chambers
3	I am frequently involved in court
0	I am frequently involved in both court and in chambers

Real Sentencing

5 (f) It has been suggested that there is sometimes a conflict between sentencing the offender for the real offence (i.e. what it appears, from the facts, that he did) and sentencing him strictly on the basis of the offence he was convicted of. Do you think that this is an issue that the Commission should examine?

18	It is a serious problem that the Commission should examine
59	It is not an issue worth pursuing because offenders should be sentenced solely on the basis of the offence of conviction
16	It is not an issue for other reasons
8	No response

Information Systems

6 (a) Would you find it helpful in the sentencing process to have a better information system about current sentencing practice?

41 Definitely yes
38 Probably yes
9 Impossible to say
12 Probably not
0 Definitely not

6 (b) Part I What kind of information would be helpful to you:

More complete reporting to C.A. judgments

47 Very helpful
31 Somewhat helpful
19 Helpful in a few cases
4 Not at all helpful

6 (b) Part II More complete reporting of trial judgments on sentencing

34 Very helpful
38 Somewhat helpful
23 Helpful in a few case
5 Not at all helpful

6 (b) Part III A national sentencing digest

46 Very helpful
29 Somewhat helpful
18 Helpful in a few cases
7 Not at all helpful

6 (b) Part IV A computer system providing basic sentencing information and information (provided by judges) about the individual cases

39 Very helpful
31 Somewhat helpful
21 Helpful in a few cases
9 Not at all helpful

6 (b) Part V A computer system providing statistical summary information about current sentencing trends

33 Very helpful
32 Somewhat helpful
21 Helpful in a few cases
14 Not at all helpful

If there are any other suggestions for type of information, it would be helpful if you could list these.

Maximum Sentences

7 (a) Part I Would you recommend a large scale revision for maximum penalties as they now exist in the Criminal Code, Narcotic Control Act, and Food and Drugs Act?

16 The pattern of maximum penalties is fine the way it now is and should not be altered
36 The pattern of maximum penalties, though not very useful as a guide in sentencing, is all right the way it is and changes would not improve anything
32 A complete revision of the maximum penalties might be an improvement
16 A complete revision of the maximum penalties should definitely be carried out

7 (a) Part II If there are specific offences where the maximum available penalties should be altered, it would be helpful to the Commission if you were to indicate this.

7 (b) Does the current maximum penalty serve as a guide in the sentencing process?

22 Most or all of the time
50 Sometimes
27 Seldom
1 Never

7 (c) Would it be useful to you, in the sentencing process, to have a reclassification of offences with maximum penalties geared closer to the sentences that are actually being imposed in practice?

12 Definitely yes
37 Probably yes
38 Probably not
13 Definitely not

7 (d) Do you feel that the present situation, where maximum penalties are seldom given out, tends to give a false impression to the public of what might be expected as a result of the sentencing decision?

24 Definitely yes
43 Probably yes
30 Probably not
3 Definitely not

7 (e) Part I Do the mandatory minimum sentences that now exist in the Criminal Code, Narcotic Control Act and Food and Drugs Act, work well?

7 (e) Part II Specifically, do they restrict your ability to give out a just sentence?

16 Yes, fairly often
41 Yes, occasionally
34 Only very rarely
9 Never

7 (e) Part III Do they help you indicate to the offender and to the public the seriousness of the offence?

38 Yes, fairly often
36 Yes, occasionally
23 Only very rarely
3 Never

7 (e) Part IV Does the existence of minimum sentences contribute to inappropriate kinds of agreements between Crown and defence such that the public's confidence in the sentencing process might be undermined?

17 Yes, fairly often
41 Yes, occasionally
37 Only very rarely
5 Never

Suspended Sentences

8 (a) Should the concept of the suspended sentence be revised to allow the judge to impose the prison sentence to be served and then suspend the serving of that time? If the offender breaches a condition of the suspension, the offender would then be sent to prison (without a resentencing hearing).

28 I would strongly favour this proposal
40 This would appear to be an improvement
4 It wouldn't make any real difference
28 I would oppose this proposal

Time Awaiting Trial

8 (b) Would you favour a proposal whereby the time spent in custody awaiting trial was automatically credited toward any prison sentence imposed by the judge? In this way, time spent in custody awaiting trial would count the same (for matters such as calculating release dates) as time served after the sentence was imposed.

29 I would strongly favour this proposal
33 This would appear to be an improvement
15 It wouldn't make any real difference
23 I would oppose this proposal

Offence Ranking

8 (c) It has been suggested that the sentencing process would be assisted by the re-ordering of offences by ranking all offences in terms of the seriousness of the offence. In such a system, offences such as robbery would be listed in the same ranked list as other quite different offences(e.g. serious property offences, or serious morals offences). Such a ranking would be intended to provide the Court with an awareness of the relative seriousness of an offence and to allow a clearer analysis of the value placed upon it by society.

6 I would strongly favour this proposal
32 This would appear to be an improvement
37 It wouldn't make any real difference
25 I would oppose this proposal

8 (d) Part I It has been suggested that a problem is created in some circumstance by offences such as robbery or sexual assault which are defined such that very broad categories of fact situations are included within them. One proposal to deal with this problem might be to break down such offences into more narrowly defined categories to reflect different degrees of severity and have different sentences applicable to each.

10 I would strongly favour this proposal
38 This would appear to be an improvement
26 It wouldn't make any real difference
27 I would oppose this proposal

8 (d) Part II If such a proposal were to be accepted, do you think that there is the danger that this would shift some of the discretion in deciding what penalty should be imposed to negotiations between the Crown and defence?

24 This is definitely a serious danger
50 It might be a problem
16 It could happen, but only in a few cases
4 It would rarely, if ever, be a problem
6 It would not be a problem

Impact of Available Programs

9 (a) Do you think that the availability of prison space has any effect on judges in their determination of the appropriate sentence?

13 Definitely yes
22 Probably yes
36 Probably not
29 Definitely not

9 (b) Part I Are there ways in which the availability of certain correctional programs (custodial and non-custodial) has an effect on the kinds of sentences you impose?

42 Definitely yes
38 Probably yes
12 Probably not
8 Definitely not

9 (b) Part II Should the availability of such programs have an effect on the sentence?

31 Definitely yes
38 Probably yes
15 Probably not
16 Definitely not

9 (b) Part III Does the quality of the supervision of non-custodial sanctions affect your willingness to assign certain non-custodial dispositions?

30 Definitely yes
33 Probably yes
21 Probably not
16 Definitely not

9 (b) Part IV Does the variation that exists from community to community in the availability of custodial and non-custodial programs create variation in sentencing across communities that should not occur?

21 Definitely yes
60 Probably yes
15 Probably not
4 Definitely not

Mandatory Supervision

10 (a) Do you think that mandatory supervision, as it presently exists should be retained?

18 Definitely yes
25 Probably yes
26 Probably not
31 Definitely not

10 (b) Should some form of earned remission continue to be available such that inmates who behaved well in prison would be released before the end of the term of their sentence?

46 Definitely yes
47 Probably yes
3 Probably not
4 Definitely not

10 (c) If some form of earned remission were to be retained, what is the maximum portion of the sentence that you think should be remitted?

Average = 30%
Most (most frequent response) = 33%

10 (d) Part I In determining the length of a sentence of imprisonment, do you try to assess the amount of time that would actually be spent in custody?

16 Almost always
23 Sometimes
26 Occasionally
35 Never

10 (d) Part II If you do sometimes try to assess the time the offender will actually spend, does this assessment have nay influence on the actual sentence you impose?

12 Almost always
28 Sometimes
31 Occasionally
29 Never

Parole Issues

10 (e) Do you think that the following aspects of full parole, as they presently exist should be retained?

Part I An offender can be paroled after serving one third of his sentence.

12 Definitely should be retained
29 Probably should be retained
27 Probably should not be retained
32 Definitely should not be retained

10 (e) Part II The decision to release the offender should be that of an administrative body such as the parole board.

25 Definitely should be retained
52 Probably should be retained
12 Probably should not be retained
11 Definitely should not be retained

10 (e) Part III The decision to release should be based largely on the person's behaviour in prison and predictions of how he would behave outside.

37 Definitely should be retained
49 Probably should be retained
8 Probably should not be retained
6 Definitely should not be retained

10 (f) Part I Do you think that there should be some form of judicial control over parole and/or early release provisions?

24 Definitely yes
27 Probably yes
26 Probably not
23 Definitely not

10 (f) Part II If there were to be some form of judicial control over release, should it be limited to certain kinds of offences (e.g. violent offences)?

22 Definitely yes
41 Probably yes
18 Probably not
19 Definitely not

10 (g) Do you think that the sentencing judge should be able to specify, at the time of sentencing, a minimum time that an offender being sentenced to prison should have to serve before being eligible to be considered for early release?

24 Definitely yes
29 Probably yes
21 Probably not
26 Definitely not

10 (h) If release procedures (parole and mandatory supervision) were to be changed dramatically, would sentencing change?

17 Definitely yes
47 Probably yes
32 Probably not
4 Definitely not

Variation as a Function of

Geographic Region and Court Level

Some analyses were conducted to see whether responses to any of the questions were affected by either the geographic region in which the respondent was resident or his or her court level. The following tables present the significant findings that emerged.

Court Level

Analyses demonstrated no significant variation in responses to any question as a function of court level (district, etc.) of respondent.

Response Variation According to Province

Considering the number of questions posed, it is noteworthy that in only 6 cases was there substantial variation due to province of residence. Those questions which did elicit variation will now be summarized. There was significant regional variation on the proportion of responses that were returned anonymously. As can be seen from Table 2, the % of anonymous returns ranged from 73% in the Prairies to 51% in British Columbia.

TABLE 2

Percentage of Anonymous Respondents, By Province

	Anonymous	Named
British Columbia	51	49
Prairies	73	27
Ontario	71	29
Quebec	60	40
Atlantic	64	36

$X^2 = 14.1$; Cramer's V = .19.

Table 3 shows variation in responses to Question 3 (d) which dealt with possible guidelines from the provincial Courts of Appeal. Fully 83% of British Columbia respondents thought this was a useful way of dealing with disparity; only 53% of the Quebec sample endorsed this position.

TABLE 3

Provincial Variation for Question 3

Question 3 (d): "Guideline" decisions which might come from the Court of Appeal of your province which might state the appropriate sentence for certain specific types of offences or might state the minimum "starting point" for particular kinds of cases. As a way of dealing with unwarranted sentencing variation this would be:

	Best Way/ Useful Way	May Be Helpful	Not Useful
British Columbia	83	9	8
Prairies	75	6	19
Ontario	78	6	16
Quebec	53	19	28
Atlantic	69	5	26

$X^2 = 38$, Cramer's V = 16.

Table 4 deals with the universality of guidelines. Only 26% of Quebec judges felt some offences should not be incorporated into a guideline system. Fully 87% of Ontario respondents endorsed this view.

TABLE 4

Provincial Variation, Question 4

Question: If there are to be guidelines, how universal should they be?

4 (a): Should there be any particular offences which should not be incorporated into a guidelines system?

	Yes	No
British Columbia	79	21
Prairies	70	30
Ontario	87	13
Quebec	26	74
Atlantic	79	21

$X^2 = 48$; Cramer's V = 40.

Table 5 deals with the role played by the judge in plea and sentence negotiations. As can be seen, British Columbia respondents state that they are least active in these negotiations.

TABLE 5

Provincial Variation, Question 5

Question 5 (e): How active a role do you presently play in plea and sentence negotiations?

	Never/Seldom Involved	Occasionally Involved	Frequently Involved
British Columbia	95	5	--
Prairies	94	4	2
Ontario	51	27	22
Quebec	61	15	24
Atlantic	94	6	--

$X^2 = 125$; Cramer's V = 28.

Table 6 deals with the utility of a National Sentencing Digest. This was seen as being most helpful to Atlantic respondents (91%) and of least use to judges in the Prairie provinces (69%).

TABLE 6

Provincial Variation, Question 6

Question 6 (b) Part III — A National Sentencing Digest would be:

	Very/Somewhat Helpful	Occasionally Helpful	Not At All Helpful
British Columbia	65	30	5
Prairies	69	20	11
Ontario	80	11	9
Quebec	76	22	2
Atlantic	91	5	4

$X^2 = 31$; Cramer's V = .16.

Table 7 presents data on the utility of current maxima as a guide to sentencing. The % who said current maxima assist in sentencing ranged form 47% (Quebec) to 11% (British Columbia).

TABLE 7

Provincial Variation, Question 7

Question 7 (b): Does the current maximum penalty serve as a guide in the sentencing process?

	Most of The Time	Sometimes	Seldom or Never
British Columbia	11	48	41
Prairies	26	45	29
Ontario	18	53	29
Quebec	47	38	15
Atlantic	21	63	16

$X^2 = 36$; Cramer's V = .17.

Finally, Table 8 shows that fully 62% of Quebec respondents felt prison availability affected sentencing, whereas this opinion was shared by only 17% of Prairie region judges.

TABLE 8

Provincial Variation, Question 8

Question 9 (g): Do you think that the availability of prison space has any effect on judges in their determination of the appropriate sentence?

	Yes: (Definitely or Probably)	No: (Definitely or Probably)
British Columbia	39	61
Prairies	17	83
Ontario	31	69
Quebec	62	38
Atlantic	39	61

$X^2 = 42$; Cramer's V = .19.

APPENDIX A: THE COMPLETE QUESTIONNAIRE

1 (a) Do you think that there should be a legislated statement of purposes and principles of sentencing?

42 Yes
22 Possibly
34 No
2 Missing

(b) Do you think that such a statement would enhance public understanding of sentencing?

28 Yes
29 Possibly
33 No

(c) Do you think that the overall purpose of sentencing is the protection of the public?

78 Yes
22 No

* (d) Are the goals that were set out in Bill C-19 in sub-section 645(1)(a-e), taken as a whole, a suitable set of goals for sentencing?

14 Definitely yes
71 Generally speaking, yes
13 No, there are some problems with these goals
2 Definitely not

If you feel that specific goals should be added, deleted, or amended, it would be helpful for us if you could indicate this to us.

* (e) Do you think that the goals (as listed above, taken from s.645, for example) should be given the same weight for every offence?

9 Definitely yes
42 Yes, except for rare exceptions
49 No

If your answer to this question was "No", do you think that this Commission should specify which goals are suited for specific offences?

16 Yes
84 No

(f) The first principle listed (from the former Bill C-19) is that the sentence should be proportionate to the gravity of the offence. Do you think that this should be the main principle in assigning the sentence?

9 Yes
23 Yes in almost all cases
54 Yes in most cases
14 No

2 Many commentators have suggested that there is a certain amount of unwarranted variation in sentences and that this violates accepted principles of sentencing.

(a) Do you think that there is unwarranted variation in sentences being handed down in Canada? In other words, do you think that a given person being sentenced in a specific case would get different sentences depending on the judge who was doing the sentencing?

12 Yes, there is too much variation from judge to judge
62 Yes, there is a fair amount of variation from judge to judge
26 The variation that does exist is not significant

(b) If you think that there is a problem of unwarranted variation in sentencing, which of the following do you think are reasons for this problem: (Check all that apply)

16 Lack of consensus on the specific purposes of sentencing
18 Lack of consensus on the important factors to be considered in sentencing
69 Different personal attitudes and/or approaches of judges to sentencing
34 Lack of consensus on how severe sentences generally should be
21 Lack of guidance from the Court of Appeal
5 Lack of legislative guidance
18 Lack of information about sentencing practice
11 Other (please specify)

(c) Do you think that the community in which a person lives (or in which the offence took place) is, in current practice, an important factor in the determination of the sentence?

25 Yes, it is very important
55 It is important in some cases
16 It is important in only a few cases
4 It is an unimportant factor in current sentencing practice

Do you think that the community should be an important factor?

23 Yes, it should be very important
54 It should be important in some cases
18 It should be important in only a few cases
5 It should be irrelevant to sentencing

(d) Do you think that there is unwarranted variation from province to province in the sentences that are handed down?

8 There is a large amount of unwarranted variation
50 There is some unwarranted variation
27 There is a small amount of unwarranted variation
9 There is only a trivial amount of unwarranted variation
7 There is no unwarranted variation

(e) Do you think that it would be helpful to have a national sentencing court which could hear appeals from all provincial courts of appeal?

8 Definitely yes
12 Yes, under certain conditions
40 Probably not
40 Definitely not

3 The Canadian Sentencing Commission is required to consider and develop guidelines for sentencing within the Canadian context. The term "guideline" usually refers to some method for structuring the sentencing decision to make sentences more predictable, understandable, and to reduce unwarranted variation. The work itself has not been operationally defined and could mean a large number of different things. We would like you to give your views on each of the following ways in which the sentencing decision might be "guided". Noted that they are not mutually exclusive. Indeed some might feel that all would aid the sentencing process whereas others might feel that all would hinder it.

(a) The present system of guidance from the C.A. in your province.

27 This is the best or one of the best ways of dealing with unwarranted variation in sentences
46 This is a useful way of dealing with unwarranted variation in sentences
8 Under special circumstances it might be a good way of dealing with unwarranted variation in sentences
8 It is not a useful way of dealing with unwarranted variation in sentences
10 It causes more problems than it solves

(b) A more explicit list of factors, purposes, or principles that should be considered in determining the sentence.

5 This would be the best or one of the best ways of dealing with unwarranted variation in sentences
37 This would be a useful way of dealing with unwarranted variation in sentences
17 Under special circumstances it might be a good way of dealing with unwarranted variation in sentences.
15 It would not be a useful way of dealing with unwarranted variation in sentences
25 It would cause more problems than it would solve

(c) An explicit statement or system of weighing of the factors to be considered in determining the sentence.

4 This would be the best or one of the best ways of dealing with unwarranted variation in sentences.
28 This would be a useful way of dealing with unwarranted variation in sentences
19 Under special circumstances it might be a good way of dealing with unwarranted variation in sentences
15 It would not be a useful way of dealing with unwarranted variation in sentences
34 It would cause more problems than it would solve

(d) "Guideline" decisions which might come from the C.A. of your province which might state, for example, the appropriate sentence for certain specific types of offences or which might state the minimum "starting point" for particular kinds of cases.

17 This would be the best or one of the best ways of dealing with unwarranted variation in sentences.
42 This would be a useful way of dealing with unwarranted variation in sentences
19 Under special circumstances it might be a good way of dealing with unwarranted variation in sentences
8 It would not be a useful way of dealing with unwarranted variation in sentences
14 It would cause more problems than it would solve

* (e) A legislated "presumptive sentence" or range of sentences for the "normal" or "average" instance of a particular offence. (Offences in such a system might be broken down into "finer" categories than they are in the Criminal Code. There could be, then, a number of different categories of offences, such as robbery, which would differ in seriousness).

4 This would be the best or one of the best ways of dealing with unwarranted variation in sentences.
20 This would be a useful way of dealing with unwarranted variation in sentences
19 Under special circumstances it might be a good way of dealing with unwarranted variation in sentences
15 It would not be a useful way of dealing with unwarranted variation in sentences
42 It would cause more problems than it would solve

* (f) Some kind of "grid" whereby offences might be broken down into a dozen or so different categories (according to the seriousness of the offence) and the offender's criminal record would similarly be categorized numerically into one of a dozen or so categories. In some states in the United States, these two scores (the "offence" and the "offender" score) taken together determine the appropriate narrowly defined range for the sentence. Judges are expected normally to sentence within that range, although provision is made to modify the sentence because of certain aggravating or mitigating circumstances. In addition, judges can go outside the range (often with certain consequences relating to the ability of the accused or the prosecutor to appeal the sentence) if they believe it is just to do so.

8 This would be the best or one of the best ways of dealing with unwarranted variation in sentences.
18 This would be a useful way of dealing with unwarranted variation in sentences
18 Under special circumstances it might be a good way of dealing with unwarranted variation in sentences
17 It would not be a useful way of dealing with unwarranted variation in sentences
44 It would cause more problems than it would solve

(g) Some form of mathematical equation combining a number of different aspects of the case in such a way that each factor is given a specific weight in arriving at a presumptive sentence?

1 This would be the best or one of the best ways of dealing with unwarranted variation in sentences.
5 This would be a useful way of dealing with unwarranted variation in sentences
13 Under special circumstances it might be a good way of dealing with unwarranted variation in sentences
22 It would not be a useful way of dealing with unwarranted variation in sentences
59 It would cause more problems than it would solve

(h) A system of ranking of all Criminal Code offences (thus removing them from their present categories of offences). This would mean that the relative seriousness of all offences would be explicit and sentences would, presumably, generally speaking, follow that legislated ranking.

2 This would be the best or one of the best ways of dealing with unwarranted variation in sentences.
23 This would be a useful way of dealing with unwarranted variation in sentences
18 Under special circumstances it might be a good way of dealing with unwarranted variation in sentences
25 It would not be a useful way of dealing with unwarranted variation in sentences
32 It would cause more problems than it would solve

* Are there any other forms of "guidelines" or systems (of any sort) that might assist judges in sentencing that you think should be considered by the Commission?

4 If there are guidelines, how "universal" should they be?

(a) Should there be any particular offences which should not be incorporated into a guidelines system?

27 No
73 Yes (If yes, it would be helpful if you could specify which ones.)

(b) If a person is to be given a sentence not involving incarceration, should there be some form of guidelines concerning what type and severity of non-carceral sentence should be imposed?

44 No
56 Yes

(c) Do you think that the same guidelines should be used for all provinces?

31 Definitely yes
53 Generally yes, but there might be some opportunity for variation
16 No

(d) Do you think that it is possible to draw up a reasonably complete set of relevant offence/offender characteristics that should or do affect sentences?

19 Yes
43 Possibly
38 No

(e) If such a list were to be created, do you think it would be useful in helping to guide the sentencing process?

25 Yes
45 Possibly
30 No

5 It has been suggested that one possible consequence of attempts to structure further the sentencing process might be that an increased number of important decisions that affect the sentencing process would be made in plea and sentence negotiations between the Crown and defence. As a result, the Commission has been asked to concern itself with the relationship of plea negotiations and sentencing.

(a) Do you think that at present plea and sentence negotiations have much of an impact on the sentencing process or on the sentences that are imposed?

41 Definitely yes
35 In some circumstances
16 Occasionally
6 Almost never
2 Never

(b) Do you think that there should be legislative recognition and control of plea and sentence negotiations?

21 Yes
27 Possibly
52 No

(c) Do you favour a legislative prohibition of plea and sentence negotiations?

5 Definitely yes
6 Yes, if it could be enforced
3 Possibly
23 Probably not
63 Definitely not

(d) Are there changes that you feel should be made in the way in which prosecutorial discretion is exercised and/or controlled?

23 Yes
32 Possibly
44 No

(e) How active a role do you presently play in plea and sentence negotiations?

58 I am never directly involved
21 I am only rarely involved
12 I am occasionally involved either in chambers or in court
6 I am frequently involved in chambers
3 I am frequently involved in court
0 I am frequently involved in both court and in chambers

(f) It has been suggested that there is sometimes a conflict between sentencing the offender for the real offence (i.e. what it appears, from the facts, that he did) and sentencing him strictly on the basis of the offence he was convicted of. Do you think that this is an issue that the Commission should examine?

18 It is a serious problem that the Commission should examine
59 It is not an issue worth pursuing because offenders should be sentenced solely on the basis of the offence of conviction
16 It is not an issue for other reasons
8 No response

6 Some judges have suggested to us that a pressing matter for the Commission to consider is the nature of information presently available to the sentencing judge.

(a) Would you find it helpful in the sentencing process to have a better information system about current sentencing practice?

41 Definitely yes
38 Probably yes
9 Impossible to say
12 Probably not
0 Definitely not

(b) What kind of information would be helpful to you:

More complete reporting of Court of Appeal judgments

47 Very helpful
31 Somewhat helpful
19 Helpful in a few cases
4 Not at all helpful

More complete reporting of trial judgments on sentencing

34 Very helpful
38 Somewhat helpful
23 Helpful in a few case
5 Not at all helpful

A national sentencing digest

46 Very helpful
29 Somewhat helpful
18 Helpful in a few cases
7 Not at all helpful

A computer system providing basic sentencing information and information (provided by judges) about the individual cases

39 Very helpful
31 Somewhat helpful
21 Helpful in a few cases
9 Not at all helpful

A computer system providing statistical summary information about current sentencing trends

33 Very helpful
32 Somewhat helpful
21 Helpful in a few cases
14 Not at all helpful

* If there are any other suggestions for type of information, it would be helpful if you could list these.

7 The Commission has also been asked to make recommendations on maximum and minimum sentences.

(a) Would you recommend a large scale revision for maximum penalties as they now exist in the Criminal Code, Narcotic Control Act, and Food and Drugs Act?

16 The pattern of maximum penalties is fine the way it now is and should not be altered
36 The pattern of maximum penalties, though not very useful as a guide in sentencing, is all right the way it is and changes would not improve anything
32 A complete revision of the maximum penalties might be an improvement
16 A complete revision of the maximum penalties should definitely be carried out

If there are specific offences where the maximum available penalties should be altered, it would be helpful to the Commission if you were to indicate this.

(b) Does the current maximum penalty serve as a guide in the sentencing process?

22 Most or all of the time
50 Sometimes
27 Seldom
1 Never

(c) Would it be useful to you, in the sentencing process, to have a reclassification of offences with maximum penalties geared closer to the sentences that are actually being imposed in practice?

12 Definitely yes
37 Probably yes
38 Probably not
13 Definitely not

(d) Do you feel that the present situation, where maximum penalties are seldom given out, tends to give a false impression to the public of what might be expected as a result of the sentencing decision?

24 Definitely yes
43 Probably yes
30 Probably not
3 Definitely not

(e) Do the mandatory minimum sentences that now exist in the Criminal Code, Narcotic Control Act and Food and Drugs Act, work well?

Do they restrict your ability to give out a just sentence?

16 Yes, fairly often
41 Yes, occasionally
34 Only very rarely
9 Never

Do they help you indicate to the offender and to the public the seriousness of the offence?

38 Yes, fairly often
36 Yes, occasionally
23 Only very rarely
3 Never

Does the existence of minimum sentences contribute to inappropriate kinds of agreements between Crown and defence such that the public's confidence in the sentencing process might be undermined?

17 Yes, fairly often
41 Yes, occasionally
37 Only very rarely
5 Never

8 There are a number of quite specific questions about current sentencing that we would like your views on:

(a) Should the concept of the suspended sentence be revised to allow the judge to impose the prison sentence to be served and then suspend the serving of that time? If the offender breaches a condition of the suspension, the offender would then be sent to prison (without a resentencing hearing).

28 I would strongly favour this proposal
40 This would appear to be an improvement
4 It wouldn't make any real difference
28 I would oppose this proposal

(b) Would you favour a proposal whereby the time spent in custody awaiting trial was automatically credited toward any prison sentence imposed by the judge? In this way, time spent in custody awaiting trial would count the same (for matters such as calculating release dates) as time served after the sentence was imposed.

29 I would strongly favour this proposal
33 This would appear to be an improvement
15 It wouldn't make any real difference
23 I would oppose this proposal

(c) It has been suggested that the sentencing process would be assisted by the re-ordering of offences by ranking all offences in terms of the seriousness of the offence. In such a system, offences such as robbery would be listed in the same ranked list as other quite different offences(e.g. serious property offences, or serious morals offences). Such a ranking would be intended to provide the Court with an awareness of the relative seriousness of an offence and to allow a clearer analysis of the value placed upon it by society.

6 I would strongly favour this proposal
32 This would appear to be an improvement
37 It wouldn't make any real difference
25 I would oppose this proposal

(d) It has been suggested that a problem is created in some circumstance by offences such as robbery or sexual assault which are defined such that very broad categories of fact situations are included within them. One proposal to deal with this problem might be to break down such offences into more narrowly defined categories to reflect different degrees of severity and have different sentences applicable to each.

10 I would strongly favour this proposal
38 This would appear to be an improvement
26 It wouldn't make any real difference
27 I would oppose this proposal

If such a proposal were to be accepted, do you think that there is the danger that this would shift some of the discretion in deciding what penalty should be imposed to negotiations between the Crown and defence?

24 This is definitely a serious danger
50 It might be a problem
16 It could happen, but only in a few cases
4 It would rarely, if ever, be a problem
6 It would not be a problem

9 We are interested in finding out the impact, if any, on sentencing of the programs and facilities that are available.

(a) Do you think that the availability of prison space has any effect on judges in their determination of the appropriate sentence?

13 Definitely yes
22 Probably yes
36 Probably not
29 Definitely not

(b) Are there ways in which the availability of certain correctional programs (custodial and non-custodial) has an effect on the kinds of sentences you impose?

42 Definitely yes
38 Probably yes
12 Probably not
8 Definitely not

Should the availability of such programs have an effect on the sentence?

31 Definitely yes
38 Probably yes
15 Probably not
16 Definitely not

Does the quality of the supervision of non-custodial sanctions affect your willingness to assign certain non-custodial dispositions?

30 Definitely yes
33 Probably yes
21 Probably not
16 Definitely not

Does the variation that exists from community to community in the availability of custodial and non-custodial programs create variation in sentencing across communities that should not occur?

21 Definitely yes
60 Probably yes
15 Probably not
4 Definitely not

10 The Commission has been asked to look at release procedures as they interact with sentencing decision. We would, therefore, appreciate your views on various aspects of release.

(a) Do you think that mandatory supervision, as it presently exists should be retained?

18 Definitely yes
25 Probably yes
26 Probably not
31 Definitely not

(b) Should some form of earned remission continue to be available such that inmates who behaved well in prison would be released before the end of the term of their sentence?

46 Definitely yes
47 Probably yes
3 Probably not
4 Definitely not

(c) If some form of earned remission were to be retained, what is the maximum portion of the sentence that you think should be remitted?

Average = 30%
Most (most frequent response) = 33%

(d) In determining the length of a sentence of imprisonment, do you try to assess the amount of time that would actually be spent in custody?

16 Almost always
23 Sometimes
26 Occasionally
35 Never

If you do sometimes try to assess the time the offender will actually spend, does this assessment have any influence on the actual sentence you impose?

12 Almost always
28 Sometimes
31 Occasionally
29 Never

(e) Do you think that the following aspects of full parole, as they presently exist should be retained?

An offender can be paroled after serving one third of his sentence.

12 Definitely should be retained
29 Probably should be retained
27 Probably should not be retained
32 Definitely should not be retained

The decision to release the offender should be that of an administrative body such as the parole board.

25 Definitely should be retained
52 Probably should be retained
12 Probably should not be retained
11 Definitely should not be retained

The decision to release should be based largely on the person's behaviour in prison and predictions of how he would behave outside.

37 Definitely should be retained
49 Probably should be retained
8 Probably should not be retained
6 Definitely should not be retained

(f) Do you think that there should be some form of judicial control over parole and/or early release provisions?

24 Definitely yes
27 Probably yes
26 Probably not
23 Definitely not

If there were to be some form of judicial control over release, should it be limited to certain kinds of offences (e.g. violent offences)?

22 Definitely yes
41 Probably yes
18 Probably not
19 Definitely not

(g) Do you think that the sentencing judge should be able to specify, at the time of sentencing, a minimum time that an offender being sentenced to prison should have to serve before being eligible to be considered for early release?

24 Definitely yes
29 Probably yes
21 Probably not
26 Definitely not

(h) If release procedures (parole and mandatory supervision) were to be changed dramatically, would sentencing change?

17 Definitely yes
47 Probably yes
32 Probably not
4 Definitely not

If you have any comments stimulated by any of these questions or if there are additional matters you would like to bring to our attention, we would appreciate any comments you might have.

Thank you very much for the time you have spent giving us your views.